

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, AMENDING FRISCO'S CODE OF ORDINANCES NO. 06-03-31, CHAPTER 54 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE II (REGULATION OF SMOKING), DIVISION 1 (SMOKING), SECTIONS 54-19 (DEFINITIONS), 54-20 (SMOKING PROHIBITED IN CERTAIN PUBLIC AREAS), 54-21 (HOSPITALS; HEALTH CARE FACILITIES), AND 54-24 (WHERE SMOKING IS NOT PROHIBITED); ADDING DIVISION 3 (ELECTRONIC CIGARETTES AND/OR E-CIGARETTES AND LIQUID NICOTINE) TO ESTABLISH REGULATIONS RELATING TO ELECTRONIC CIGARETTES AND/OR E-CIGARETTES AND LIQUID NICOTINE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") has investigated and determined that the City of Frisco, Texas' ("City") Code of Ordinances No. 06-03-31, as amended, ("Code of Ordinances") Chapter 54 (Offenses and Miscellaneous Provisions), Article II (Regulation of Smoking), Division 1 (Smoking), Sections 54-19 (Definitions), 54-20 (Smoking Prohibited in Certain Public Areas) and 54-21 (Hospitals; Health Care Facilities) and 54-24 (Where Smoking is Not Prohibited) should be amended as set forth herein; and

WHEREAS, the City Council has further investigated and determined that the Code of Ordinances, Chapter 54 (Offenses and Miscellaneous Provisions) should be amended to add Division 3 (Electronic Cigarettes and/or E-Cigarettes and Liquid Nicotine) for the purpose of establishing regulations relating to electronic cigarettes and/or e-cigarettes and liquid nicotine as set forth herein; and

WHEREAS, the City Council has further investigated and determined that the smoking of electronic cigarettes and/or e-cigarettes and liquid nicotine have been demonstrated to have a detrimental effect on others in close proximity to the smoker; and

WHEREAS, the City Council has further investigated and determined that it is the right of all citizens to be able to choose for themselves whether to smoke either actively or passively; and

WHEREAS, the City Council has further investigated and determined that it will be advantageous and beneficial to the City and its citizens to provide patrons of retail and service establishments a smoke-free environment; and

WHEREAS, the City Council has further investigated and determined that it will be advantageous and beneficial to the Citizens and its inhabitants to regulate smoking in public places in the City, with certain exceptions, to reduce detrimental effects on not

only the smoker, but others in close proximity to the smoker and to further the health, safety and welfare of the City and its citizens; and

WHEREAS, the City Council has further investigated and determined that the state and federal governments have been slow to respond meaningfully to the public health crisis caused by smoking, and to implement measures to curb smoking and its inherent dangerous effects on the general public's health; and

WHEREAS, the City Council has further investigated and determined that the dangers posed by tobacco are not limited to cigarettes, pipes or other traditional forms of smoking; and

WHEREAS, the City Council has further investigated and determined that the new, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes or e-cigarettes, have recently become more available to consumers; and

WHEREAS, the City Council has further investigated and determined that nicotine is a known neurotoxin that is also one of the most highly addictive substances available for public consumption; and

WHEREAS, the City Council has investigated and determined that, the manufacturers and marketers of electronic cigarettes or e-cigarettes purposefully and intentionally advertise their products as safe nicotine delivery devices and smoking cessation modalities; and

WHEREAS, the City Council has further investigated and determined that laboratory tests conducted by the U.S. Food and Drug Administration ("FDA") have shown that electronic cigarettes or e-cigarette vapors contain carcinogens, including nitrosamines. Further, the FDA tests showed that electronic cigarettes or e-cigarettes vapors were found to contain toxic chemicals such as, diethylene glycol, a common ingredient in antifreeze and which ingredient, in 2007, was surreptitiously substituted for glycerin by several Chinese manufacturing companies in the making of toothpaste which resulted in the deaths of hundreds of people worldwide. While some manufacturers of electronic cigarettes or e-cigarettes dispute the FDA's findings as limited in scope and sample, these manufacturers have not submitted, for independent peer review, any of their findings that purportedly support their safety and smoking cessation claims; and

WHEREAS, the City Council has further investigated and determined that concurrent with this lack of suitable information, manufacturers of electronic cigarettes or e-cigarettes offer their liquid nicotine cartridges in a variety of flavors, including, but not limited to, cherry, chocolate and vanilla, which flavorings the FDA and public health advocates warn are purposefully meant to appeal to and attract young people and are commonly referred to as "training wheels" for traditional cigarettes; and

WHEREAS, the City Council has further investigated and determined that studies show that adolescents can become addicted to nicotine after ingesting the equivalent of twenty (20) traditional cigarettes, the amount traditionally available in a single pack, and



the appeal created by the flavored electronic cigarettes, e-cigarettes and/or liquid nicotine can lead young people into a lifetime of nicotine addiction; and

WHEREAS, the City Council has further investigated and determined that the nicotine content provided by electronic cigarettes or e-cigarettes is unknown and unspecified and presents a significant risk of rapid addiction or overdose; and

WHEREAS, the City Council has further investigated and determined that other governments and public health organizations, including the World Health Organization and the Canadian government's FDA equivalent, the Health Products and Food Branch Inspectorate, have joined the FDA in speaking out about the potential dangers posed by electronic cigarettes or e-cigarettes and are also calling on manufactures of electronic cigarettes or e-cigarettes to discontinue their safety claims until these products have been independently tested; and

WHEREAS, the City Council has further investigated and determined that every year tobacco products siphon off more than \$268 billion in directly related healthcare and lost worker productivity costs and lead to the deaths of almost half a million Americans, and the City Council is supportive of tobacco cessation programs and modalities that have proven efficacy and utilize safe FDA-approved products; and

WHEREAS, the City Council has further investigated and determined that protecting the citizens of the City against an untested nicotine product like electronic cigarettes, e-cigarettes and liquid nicotine represents sound public health and fiscal policy; and

WHEREAS, the City Council has further investigated and determined that a ban on the sale of electronic cigarettes, e-cigarettes, liquid nicotine and like products in the City to persons under the age of eighteen (18) and a prohibition on self-service merchandising in the retail sale of electronic cigarettes, e-cigarettes, liquid nicotine and like products in order to minimize their physical accessibility to minors serves an important public interest in furtherance of the health, safety and general welfare of the citizens of the City; and

WHEREAS, the City Council has further investigated and determined that the Texas Legislature currently prohibits the possession, purchase, consumption or receipt of cigarettes or tobacco products by minors, and the City enforces such regulations; and

WHEREAS, the City Council has further investigated and determined that the Texas Legislature currently regulates vendor assisted sales and vending machines of cigarettes or tobacco products, including, but not limited to, prohibiting the use of the same by minors; and

WHEREAS, the City Council has further investigated and determined that all legal notices required for amending the Code of Ordinances have been given in the manner and form set forth by law, and public hearings have been held on the proposed textual amendments and all other requirements of notice and completion of such procedures have been fulfilled; and

WHEREAS, the City Council has further investigated and determined that in order to promote the public health, safety and welfare of the City and its citizens, it is in the best interest of the City and its citizens to amend the Code of Ordinances as set forth below.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:**

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendment to the Code of Ordinances, Chapter 54 (Offenses and Miscellaneous Provisions), Article II (Regulation of Smoking), Division 1 (Smoking), Sections 54-19 (Definitions), 54-20 (Smoking Prohibited in Certain Public Areas), 54-21 (Hospitals; Health Care Facilities) and 54-24 (Where Smoking is Not Prohibited). The Code of Ordinances, Chapter 54 (Offenses and Miscellaneous Provisions), Article II (Regulation of Smoking), Division 1 (Smoking), Sections 54-19 (Definitions), 54-20 (Smoking Prohibited in Certain Public Areas), 54-21 (Hospitals; Health Care Facilities) and 54-24 (Where Smoking is Not Prohibited) are hereby amended as follows:

**"ARTICLE II. REGULATION OF SMOKING  
DIVISION 1. SMOKING**

**Sec. 54-19 Definitions**

...

Cigar as used herein shall mean, unless otherwise amended by the TEX. TAX CODE, Chapter 155, a roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

Cigarette as used herein shall mean, unless otherwise amended by the TEX. TAX CODE, Chapter 154, a roll for smoking: (A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and (B) that is not a cigar.

...

Electronic cigarette and/or e-cigarette as used herein shall mean any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides, or is manufactured or intended to provide, a vapor of liquid nicotine and/or other substances mixed with propylene glycol and/or other substances delivered or deliverable to the user that he/she can inhale in simulation of smoking. This term shall include every version and type of such devices whether they are manufactured or marketed as electronic cigarettes, e-cigarettes, electronic cigars, e-cigars, electronic pipes, e-pipes or under any other product name or description.



...

Liquid nicotine as used herein shall mean any liquid product composed either in whole or in part of pure nicotine and propylene glycol and/or any other substance and manufactured for use with electronic cigarettes or e-cigarettes.

Minor as used herein means a person younger than eighteen (18) years of age.

...

Open display unit as used herein shall mean, in the context of the retail sale of electronic cigarettes or e-cigarettes and/or liquid nicotine, any device, furniture or furnishing within or upon which electronic cigarettes or e-cigarettes and/or liquid nicotine are displayed to customers, and includes, but is not limited to, any case, rack, shelf, counter, table, desk, kiosk, booth, stand, vending machine and other surface.

...

Place of business as used herein shall mean: (A) a commercial business location where cigarettes, tobacco products, electronic cigarettes or e-cigarettes and/or liquid nicotine is/are sold; (B) a commercial business location where cigarettes, tobacco products, electronic cigarettes or e-cigarettes and/or liquid nicotine are kept for sale of consumption or otherwise stored; or (C) a vehicle from which cigarettes, tobacco products, electronic cigarettes or e-cigarettes and/or liquid nicotine is/are sold.

...

Possess(es), possessing or possession as used herein shall mean actual care, custody, control or management.

...

Retail electronic cigarette store as used herein shall mean a retail store utilized solely for the sale and sampling of electronic cigarettes or e-cigarettes and/or liquid nicotine and related accessories.

...

Retailer as used herein shall mean a person, place of business or retail and service establishment, who/which engages in the practice of selling cigarettes, tobacco products, electronic cigarettes or e-cigarettes and/or liquid nicotine to consumers and includes, without limitation, the owner of an open display unit.

...

Smoke(s) or smoking as used herein shall mean and includes the carrying, possessing or holding of a pipe, cigarette, tobacco product, electronic cigarette or e-cigarette or liquid nicotine of any kind which is burning or emitting a vapor.

...

Self-service merchandising as used herein shall mean, in the context of the retail sale of electronic cigarettes or e-cigarettes and/or liquid nicotine, the open display, including, without limitation, the use of an open display unit of electronic cigarettes or e-cigarettes and/or liquid nicotine, whether packaged or otherwise, for direct retail customer access and handling prior to purchase without the intervention of assistance of the retailer or the retailer's owner, employee or agent.

...

Tobacco product as used herein shall mean: (A) cigar; (B) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette; (C) chewing tobacco, including Cavendish, Twist, plug scrap and any kind of tobacco suitable for chewing; (D) snuff or other preparations of pulverized tobacco; or (E) an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.

...

#### **Sec. 54-20     Smoking prohibited in certain public areas**

(a) A person commits an offense in violation of this article if he smokes or possesses a burning tobacco, weed, other plant product, electronic cigarette or e-cigarette or liquid nicotine in any of the following indoor and/or enclosed areas:

...

#### **Sec. 54-21     Hospitals; health care facilities**

A person commits an offense in violation of this article if he smokes or possesses a burning tobacco, weed, other plant product, electronic cigarette or e-cigarette or liquid nicotine in any public area of a health care facility or hospital...

...

**Sec. 54-24    Where smoking is not prohibited**

...

- (5)    Retail electronic cigarette stores.”

SECTION 3: Amendment to the Code of Ordinances, Chapter 54 (Offenses and Miscellaneous Provisions), Article II (Regulation of Smoking). The Code of Ordinances, Chapter 54 (Offenses and Miscellaneous Provisions), Article II (Regulation of Smoking) is hereby amended to add Division 3 (Electronic Cigarettes and/or E-Cigarettes and Liquid Nicotine):

**“ARTICLE II. REGULATION OF SMOKING  
DIVISION 3. ELECTRONIC CIGARETTES  
AND/OR E-CIGARETTES AND LIQUID NICOTINE**

**Sec. 54-56    Purpose and intent**

This Ordinance is adopted so that the City Council may promote, protect and improve the health, safety and general welfare of the citizens of the City by discouraging the unhealthy practice of using electronic cigarettes or e-cigarettes and liquid nicotine and to help prevent the addiction to nicotine, especially by minors, through regulation of the sale and merchandising of certain electronic cigarettes or e-cigarettes and liquid nicotine products, the regulation of which is not preempted to the federal or state government.

**Sec. 54-57    Possession, purchase, consumption or receipt of electronic cigarettes or e-cigarettes and/or liquid nicotine by minors prohibited**

(b)    A person who is younger than 18 years of age commits an offense if the individual:

- (1)    Possesses, purchases, consumes or accepts an electronic cigarette, e-cigarette or liquid nicotine; or
- (2)    Falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false, fraudulent or not actually proof of the individual's own age in order to obtain possession of, purchase or receive an electronic cigarette, e-cigarette or liquid nicotine.

(c)    It shall be a defense to prosecution for a violation of this section if the individual younger than 18 years of age possessed the electronic cigarette, e-cigarette or liquid nicotine in the presence of:

- (1)    An adult parent, a guardian or a spouse of the individual; or



- (2) An employer of the individual, if possession or receipt of the electronic cigarette, e-cigarette or liquid nicotine is required in the performance of the employee's duties as an employee.

(d) It shall also be a defense to prosecution for a violation of this section that the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088, Health and Safety Code.

**Sec. 54-58 Sale of electronic cigarette or e-cigarette or liquid nicotine to persons younger than 18 years of age prohibited; proof of age required**

(a) A person or retailer commits an offense if the person or retailer with criminal negligence:

- (1) Sells, gives or causes to be sold or given an electronic cigarette or e-cigarette or liquid nicotine to someone who is younger than 18 years of age; or
- (2) Sells, gives or causes to be sold or given an electronic cigarette or e-cigarette or liquid nicotine to another person who intends to deliver it to someone who is younger than 18 years of age.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which electronic cigarettes, e-cigarettes and/or liquid nicotine is/are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

(c) It is a defense to prosecution under subsection (a)(1) that the person to whom the electronic cigarette, e-cigarette or liquid nicotine was sold or given presented to the defendant apparently valid proof of identification.

(d) A proof of identification satisfies the requirements of subsection (c) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport or an identification card issued by a state or the federal government.



**Sec. 54-59 Vendor assisted sales required; self-service merchandising prohibited**

(a) Except as provided by Subsection (b), a retailer or other person may not:

- (1) Offer electronic cigarettes, e-cigarettes or liquid nicotine for sale in a manner that permits a customer direct access to the electronic cigarettes, e-cigarettes or liquid nicotine;
- (2) Offer for sale or display for sale electronic cigarettes, e-cigarettes or liquid nicotine by means of self-service merchandising; or
- (3) Install or maintain an open display unit containing electronic cigarettes, e-cigarettes or liquid nicotine.

(b) It is a defense to prosecution under subsection (a) if:

- (1) A facility or business is not open to persons younger than 18 years of age at any time;
- (2) A facility or business is a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code; or
- (3) An open display unit is located in an area that is inaccessible to customers.

**Sec. 54-60 Enforcement**

This Chapter 54, Article II, Division 3 shall be enforced by the city's police department."

SECTION 4: Penalty Provision. Any person, firm, corporation, retailer or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of FIVE HUNDRED DOLLARS (\$500.00), unless the violation relates to the Code of Ordinances, Chapter 54, Article II, Division 3, Section 54-57, in which case, the fine shall not exceed the sum of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

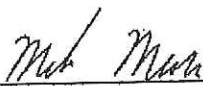
SECTION 5: Savings/Repealing Clause. The Code of Ordinances shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed; but such repeal shall not abate any pending prosecution for violation of the repealed Ordinance,

nor shall the repeal prevent prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of conflicting ordinances shall remain in full force and effect.

**SECTION 6: Severability.** Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause and/or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and/or phrases be declared unconstitutional or invalid.

**SECTION 7: Effective Date.** This Ordinance shall become effective from and after its passage and publication as required by the City Charter and by law.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS,** on this 18th day of February, 2014.

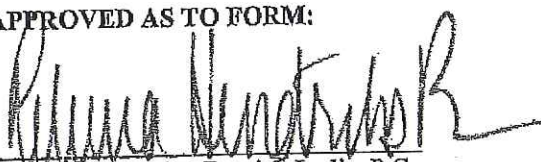
  
Maher Maso, Mayor

ATTESTED AND  
CORRECTLY RECORDED:

  
Jenny Page, City Secretary



APPROVED AS TO FORM:

  
Abernathy, Roeder, Boyd & Joplin, P.C.  
Rebecca Hendricks Brewer, City Attorneys

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